



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 08, 2023

IN THE MATTER OF:

Appeal Board No. 628449

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determinations, disqualifying the claimant from receiving benefits, effective July 6, 2022, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, disqualifying the claimant from receiving benefits, effective July 6, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to July 6, 2022, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed February 28, 2023 (), the Administrative Law Judge sustained the initial determination of voluntary separation and did not rule on the initial determination of misconduct.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. The employer did not appear at the hearing after requesting an adjournment due to the unavailability of its witness. We have determined that both parties should have the opportunity to provide additional and detailed first-hand testimony to determine whether the claimant's refusal to be vaccinated disqualified her from receiving unemployment insurance benefits.

Further, in *Rivicci v. New York City Fire Dept.*, 2022 NY MISC LEXIS 9115, the

Court found that the employer's Assistant Commissioner of Equal Opportunity, Don Nguyen, provided an affidavit stating that the employer had granted 20 reasonable accommodations, both for medical and religious exemptions. At the further hearing, the employer should produce Mr. Nguyen and his affidavit. Mr. Nguyen should be questioned regarding the nature of the accommodations, why those accommodations were granted, any criteria for granting the requests, the type of work that these individuals performed, why the claimant's request was denied, and any other reasoning or rationale for the denial. The parties should be further questioned regarding whether there was any cooperative dialogue regarding the claimant's accommodation request.

The parties should be further questioned regarding the claimant's request for a religious exemption from the vaccination requirement, the application process, the acceptance/rejection of such applications and any appeal rights thereafter. The employer should be questioned about why it allowed the claimant to work, in the office, for over eight months without a vaccination or an exemption from vaccination. The employer should explain the "potential for undue hardship" as relied upon to deny the claimant's request for a religious exemption. Any documentary evidence in support of such testimony shall be entered into the record after an opportunity for objection.

The claimant's five-page request for a religious exemption dated October 26, 2021; the employer's December 30, 2021 response to her application; the claimant's January 4, 2022, appeal from the employer's denial of her request for her religious exemption; and the employer's denial of her appeal dated June 6, 2022, should be entered into evidence after an opportunity for objection.

The claimant be questioned regarding why her religious beliefs prevented her from receiving the COVID-19 vaccination, whether the beliefs required the claimant to refuse all vaccinations, her previous vaccinations, if any, and whether such vaccinations were contrary to her religious beliefs.

The Judge will take any additional testimony and evidence necessary to complete the hearing.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER